

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAMA L. MAYNARD,)	
)	
Plaintiff,)	
)	No. 2:14-cv-00027
v.)	
)	Judge Sharp
CAROLYN W. COLVIN.)	Magistrate Judge Knowles
Acting Commissioner of Social Security)	
)	
Defendant.)	

ORDER

Plaintiff Jama L. Maynard filed this action to appeal the Social Security Administration’s denial of her request for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act. Plaintiff, who is represented by counsel, filed this case one day beyond the time permitted by 42 U.S.C. § 405(g) and 20 C.F.R. § 422.210. (Docket No. 1). The Social Security Administration (“SSA”) subsequently moved to dismiss the case as untimely. (Docket No. 17). Plaintiff opposed the Motion to Dismiss, accepting responsibility for the late filing, attributing the delay to a former paralegal’s calendaring error, and seeking equitable tolling for a period of one day. (Docket Nos. 20, 21). Magistrate Judge Knowles has filed a Report & Recommendation (“R & R”) in which he recommends that the Court grant Plaintiff’s request for equitable tolling and deny Defendant’s Motion to Dismiss. (Docket No. 23). The SSA filed timely objections to the R & R (Docket No. 24), to which Plaintiff has responded (Docket No 25).


Having undertaken review of this matter in accordance with Rule 72 of the Federal Rules of Civil Procedure, the Court finds that the R & R is the correct decision. In deciding to approve the R & R, the Court has reviewed the objections raised by the SSA and the standard for

equitable tolling. According to the Sixth Circuit, courts consider five factors when determining the appropriateness of equitable tolling: “(1) the petitioner’s lack of notice of the filing requirement; (2) the petitioner’s lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one’s rights; (4) absence of prejudice to the respondent; and (5) the petitioner’s reasonableness in remaining ignorant of the legal requirement for filing his claim.” Dunlap v. United States, 250 F.3d 1001, 1008 (6th Cir. 2001). After considering these factors, especially the third and fourth factors, the Court agrees with Magistrate Judge Knowles that equity favors tolling the statute for one day.

Accordingly, the Court hereby rules as follows:

- (1) The R & R (Docket No. 23) is ACCEPTED and APPROVED;
- (2) Defendant’s Motion to Dismiss (Docket No. 17) is DENIED;
- (3) Plaintiff’s Complaint is DEEMED TIMELY; and
- (4) Defendant is DIRECTED to file its Answer and the Administrative Record.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE